

REMARKS

The Examiner's rejection of claims 3, 5, 6 and 20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully traversed. Applicant has amended claim 3 to provide proper antecedent basis for said data transmission. Claim 1 has been amended to include "data transmission." Claims 5 and 6 have been amended in form to provide proper antecedent basis for "means for informing." Claim 20 has been amended regarding "said means..." to provide proper antecedent basis.

The Examiner's rejection of claim 12 under 35 U.S.C. 112, first paragraph, for failing to comply with the written description requirement is respectfully traversed. Applicant has amended claim 12 to overcome the Examiner's rejection concerning the written description requirement.

The Examiner's objection to the Amendment filed November 12, 2004 under 35 U.S.C. 132 as introducing new matter is respectfully traversed. Applicant has amended claim 12 as discussed above to overcome the Examiner's objection. It is applicant's position that, as amended, there is no new matter in the amended application including amended claim 12.

The Examiner's rejection of claims 1, 3, 5, 9, 10-12, 14-16, 18 and 20 under 35 U.S.C. 102(e) as being anticipated by Banet, et al. is respectfully traversed. Anticipation

requires that each and every element of the claimed invention be disclosed in a single prior art reference. The test is the same for a process. Anticipation requires identity of the claimed process and a process of the prior art; the claimed process, including each step thereof, must have been described or embodied either expressly or inherently in a single reference. In re Paulsen, 30 F.3d 1475, 35 U.S.P.Q.2d 1671, 1673 (Fed. Cir. 1994); Glaverbel S.A. v. North Lake Mfg. Supp., Inc., 45 F.3d 1550, 33 U.S.P.Q.2d 1496 (Fed. Cir. 1995). Banet, et al. lacks several of the necessary steps and elements required for a proper rejection of anticipation under 35 U.S.C. 102(e). The Banet, et al. reference is for a wireless diagnostic system for an automobile or vehicle's exhaust emissions that includes a sensor placed in the exhaust pipe of a vehicle. There is absolutely no teaching or showing expressly or implicitly in Banet, et al. to make breathing air testing and certification a quick and simple procedure, alleviating the necessity of transferring an actual air sample from a compressor or compressed air tank to a geographically remote certification site. These specific method steps and elements are contained in applicant's amended claims and are not suggested nor expressed in the Banet, et al. reference. Therefore, it is applicant's position that the rejection under 35 U.S.C. 102 of anticipation is improper.

The Examiner's rejection of claims 1, 3, 5, 6, 8-12, 14 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Sunshine in view of Banet, et al. is respectfully traversed. It is improper to use the inventor's patent application as an instruction book on how to reconstruct the prior art. Panduit Corp. v. Dennison Mfg., Co., 810 F.2d 1561, 1

U.S.P.Q.2d 1593 (Fed. Cir. 1987). The proper determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and that the overall objectives of the inventor would result. When viewing Banet, et al. and the Sunshine reference, neither of the references suggest nor teach a method or system as claimed to expedite checking breathing air used in scuba tanks and other emergency air tanks through a third party certification facility without the requirement of transporting an actual air sample to the qualified certification site. It is applicant's position, especially with respect to the Banet, et al. reference as discussed above by applicant in applicant's remarks, that even if the Banet, et al. reference were combined with the Sunshine reference, applicant's claimed invention would not result. Therefore, it is applicant's position that the Examiner has failed to establish a prima facie case of obviousness. The Sunshine reference relates to the detection and transmission of sensory data using computer codes for detecting and transmitting sensory data from one portable device to another for analytic purposes. Banet, et al. teaches using a sensor in a vehicle exhaust in conjunction with on-board diagnostic testing of a vehicle for transmitting data to remote sites. None of these references deal with certifying the air purity of air used in scuba tanks or emergency air tanks through a required third party certification facility for expediting the results.

It is applicant's position that the claims, as amended, are allowable on their face and that the application is ready to be passed to issue.

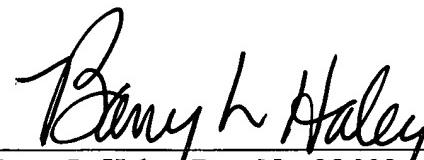
In re application of: LAUGLIN, Robert M.

Serial No.: 10/045,229

Page 10

If there are any additional charges, including extension of time, please bill our
Deposit Account No. 13-1130.

Respectfully submitted,


Barry L. Haley Reg. No. 25,339
Malin, Haley & DiMaggio, P.A.
1936 South Andrews Avenue
Fort Lauderdale, Florida 33316
(954) 763-3303